

- (1) Did claimant's alleged injury of October 1993 arise out of and in the course of her employment with Beech Aircraft Corporation?
- (2) Did claimant provide notice to the respondent of an alleged injury within ten (10) days after the date of the alleged accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of Preliminary Hearing, the Appeals Board finds:

- (1) The claimant's injury did arise out of and in the course of her employment with Beech Aircraft Corporation.

Claimant was employed riveting, drilling, counter-sinking, and doing sheet metal work for the respondent and had been so employed for several years prior to the date of injury. Claimant first began noticing problems with her left upper extremity and shoulder approximately one year before the alleged date of injury. By September of 1993, her problems had "become bad", with "real pain" in October of 1993.

On October 10, 1993, a Sunday morning, claimant awoke, unable to move her shoulder. She went to the emergency room of a local hospital and advised Dr. Morgan, the emergency room physician, that she "woke up" with her shoulder problem. Claimant was referred to Dr. Eyster and also advised him that she "woke up" with the problem on Sunday morning. The patient was ultimately diagnosed with rotator cuff tendinitis and/or bursitis and underwent conservative care, including injections of the shoulder by Dr. Eyster.

Claimant was returned to employment on October 20, 1993, and worked until November 11, 1993, subsequent to a Dr. Eyster ordered arthrogram. Claimant testified she advised her supervisor, Mr. DeLois Santos, of the work-related nature of the problem. Mr. Santos, claimant's crew chief, was not deposed in this matter and, respondent elected to provide no information or evidence from Mr. Santos to contradict claimant's sworn testimony.

While the claimant appears to be her own worst enemy in this matter, she nevertheless did testify to having advised her crew chief of the work-related nature of this problem. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

The testimony of the claimant describing her work responsibilities and the development of the problems in her left upper extremity at work, is sufficiently persuasive to convince the Appeals Board that claimant's condition more probably than not arose out of and in the course of her employment with Beech Aircraft Corporation. The Board recognizes that it is the claimant's burden of proof to establish his or her right to an award of compensation by proving the various conditions upon which that right depends. K.S.A. 44-501(a); Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984). The Board further recognizes that whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case. Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 440, 680 P.2d 556 (1984).

The Board finds that the claimant's injury arose out of and in the course of her employment with the respondent as an apparent causal connection does exist between the work described by the claimant and the resulting injury to her left upper extremity and shoulder.

(2) Claimant provided sufficient notice under K.S.A. 44-520 to the respondent of the particulars associated with her alleged work-related injury.

The un rebutted testimony of the claimant that she advised her crew chief of the work-related nature of the problems is sufficient to convince the Appeals Board that appropriate notice under K.S.A. 44-520 was provided to the respondent. The testimony of the claimant regarding the notice to the crew chief could have been challenged by the respondent through either affidavit or deposition testimony of the crew chief. The respondent elected to provide no rebuttal of claimant's allegations and as such the Appeals Board finds claimant's testimony, other contradictory evidence notwithstanding, to be more probably true than not true based upon the entire record.

As claimant testified to having advised the crew chief of her problems during the week she returned to work, i.e. October 20, 1993, this would be within ten (10) days of the claimant's alleged date of injury of October, 1993. The Appeals Board finds claimant has satisfied the provisions of K.S.A. 44-520 in providing appropriate notice to the respondent within ten (10) days of the date of the accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the order of Administrative Law Judge Shannon S. Krysl dated January 12, 1994, should be, and hereby is, affirmed in all respects and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of May, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Dale V. Slape, 1009 S. Broadway, Wichita, KS 67211
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Shannon S. Krysl, Administrative Law Judge
George Gomez, Director